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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE**

STATE OF WASHINGTON, *et al.*,

## Plaintiffs,

V.

UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY, *et al.*,

## Defendants

No. 4:19-cv-5210-RMP

**REPORT PURSUANT TO MAY 13,  
2020 ORDER**

1 Defendants respectfully submit this report pursuant to the Court's May 13, 2020  
2 Order Denying in Part and Granting in Part Defendants' Motion to Stay Discovery Order  
3 re: Privilege Log ("Order"). ECF No. 219. The Court ordered Defendants to produce a  
4 privilege log pertaining to Defendants' administrative record on a rolling basis starting  
5 on June 12, 2020. *Id.* at 6. The Court further ordered Defendants to make reports to the  
6 Court and Plaintiffs every other Friday, on their progress toward completion of the  
7 privilege log. *Id.*

8 **Notifying Custodians of Obligation to Preserve Documents**

9 First, the Court ordered Defendants to report on their progress in "notifying  
10 potential custodians of their obligation to preserve potentially relevant documents, even  
11 if assertedly privileged[.]" Order at 6. As discussed in Defendants' June 12, 2020 report,  
12 Defendants have notified all potential custodians of their obligation to preserve  
13 potentially relevant documents, even if assertedly privileged.

14 **Segregating Privileged Documents for Review**

15 Second, the Court ordered Defendants to report on their progress in "segregating  
16 all assertedly privileged documents for review." Order at 6.

17 As reported previously, Defendants believe they have collected all necessary  
18 emails and other electronic documents for the privilege review. Although electronic  
19 records are expected to constitute the vast majority of documents subject to the Court's  
20 Order, it is possible that there could be paper documents that do not also exist in electronic  
21 form. At this time, due to the COVID-19 crisis and the telework status of most agency  
22 personnel, Defendants cannot determine whether there are any paper documents that will

1 need to be collected, as those documents are physically located in agency offices and are  
 2 therefore currently inaccessible.

3 **Logging Privileged Documents**

4 Third, the Court ordered Defendants to report on their progress in logging  
 5 privileged documents pursuant to Fed. R. Civ. P. 26(b)(5)(A). Order at 6. As of  
 6 November 13, 2020, 49,439 documents have been batched for review in the DOJ  
 7 document review platform.<sup>1</sup> 49,362 (*i.e.*, 99.8%) of those documents have undergone an  
 8 initial review. 6,132 of the documents require final review by agency counsel and, as  
 9 necessary, by counsel at the Department of Justice. The documents awaiting final level  
 10 review include many documents that contain third party equities and which Defendants  
 11 expect to include in future installments of the privilege log after consulting with the  
 12 appropriate third parties. Similarly, some of the documents that underwent final review  
 13 since the last status report contain third party equities and require consultation with third  
 14 parties. 266 documents are currently listed on the privilege log.

15  
 16 Dated: November 13, 2020

Respectfully submitted,

17  
 18 JEFFREY BOSSERT CLARK  
 Acting Assistant Attorney General

19  
 20 WILLIAM D. HYSLOP  
 United States Attorney

21  
 22 <sup>1</sup> Defendants previously reported that 50,152 documents had been batched for review.  
 Defendants have since determined that that count included some documents already  
 contained in the administrative record and which do not need to be reviewed for the  
 privilege log.

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2 Branch Director

3 /s/ *Joshua M. Kolsky*  
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## **CERTIFICATE OF SERVICE**

I hereby certify that on November 13, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all users receiving ECF notices for this case.

/s/ Joshua Kolsky  
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